In the Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 82

ITALIA SOCIETA PER AZIONI DI NAVIGAZIONE,
Petitioner,

v.

OREGON STEVEDORING COMPANY, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONER

ERSKINE WOOD,
ERSKINE B. WOOD,
Counsel for Petitioner,
1310 Yeon Building,
Portland 4, Oregon.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 8-63

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 876

ITALIA SOCIETA PER AZIONI DI NAVIGAZIONE,
Petitioner,

v.

OREGON STEVEDORING COMPANY, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the district court (R. 21-23) is unreported. The majority and dissenting opinions in the Court of Appeals for the Ninth Circuit (R. 43-54, 54-64) are reported in 310 F2d 481, 488; 1963 AMC 79, 89.

JURISDICTION

The judgment of the Court of Appeals was entered October 25, 1962 (R. 64-65). A timely petition for rehearing was denied, with dissent, on December 5, 1962 (R. 65). The petition for a writ of certiorari was filed February 27, 1963, and granted on April 15, 1963 (R. 66; 372 US 963). The jurisdiction of this Court is based on 28 USC § 1254 (1).

QUESTIONS PRESENTED

1. Does the implied warranty owed by a stevedore contractor to its shipowner customer[1] include a warranty that gear and equipment furnished and brought aboard the vessel for its own use shall be reasonably suitable for its intended use?

2. Is a shipowner entitled to indemnity against its stevedore contractor who, although not negligent, has brought aboard the vessel for use in the stevedoring operations equipment which is unsuitable because of latent defect, and thereby subjected the shipowner to liability for damages to the stevedore's longshore employee injured by the defective equipment?

---

[1] *Ryan Stevedore Co.* v. *Pan-Atlantic S.S. Corp.*, 350 US 124; *Crumady* v. *The J. H. Fisser*, 358 U.S. 423; *Waterman S.S. Corp* v. *Dugan & McNamara*, 364 US 421.

STATEMENT OF THE CASE

On November 19, 1958, pursuant to a written contract between the parties, respondent Oregon Stevedoring Company was performing stevedoring services on petitioner's vessel, the Antonio Pacinotti, in the harbor of Portland, Oregon.

The stevedoring contract required the stevedore to furnish all labor and supervision and also "all ordinary gear for the performance of the services . . . and usual appliances used for stevedoring" (R. 23a). For use in the stevedoring operations, the stevedore furnished and brought aboard the vessel a tent to protect cargo from rain, with attached tie ropes. The tent and attached tie ropes were owned, supplied, rigged and at all times used under the exclusive supervision and control of the stevedore (R. 25).

During the work of rigging the tent, done by the stevedoring company as a part of its stevedoring services, while one Griffith, a longshoreman employee of the stevedoring company, was pulling on a tie-down rope, the rope broke, resulting in injury to Griffith. The rope broke because it was defective and unfit for the purpose intended (R. 25). The defect was not visible, but latent, and there was no proof of negligence on the part of the stevedoring company.

Griffith sued petitioner in the state court and recovered a judgment, which petitioner paid. Petitioner shipowner then brought suit for indemnity against respondent, the contracting stevedore, in the United States

District Court for the District of Oregon, in Admiralty, based upon the stevedoring contract, a maritime contract.[2]

The district court's findings of fact, summarized above, are set forth in full in the Record, pp. 23-26. Finding no negligence on the part of the stevedore, and construing the contract as relieving the stevedore from all liability except for negligence, the district court entered a decree dismissing the libel.

The Court of Appeals affirmed, by a two-judge decision, holding that the implied warranty owed by a stevedore to a shipowner is merely a warranty against negligence, and does not include a warranty that equipment furnished and brought aboard the vessel by the stevedore shall be suitable for the intended use. Judge Jertberg dissented, agreeing with the decision of the Court of Appeals for the Second Circuit, in *Booth S.S. Co.* v. *Meier & Oelhaf*, 262 F2d 310 (1958), that the contractor's implied warranty is breached by furnishing defective equipment regardless of negligence.

SUMMARY OF ARGUMENT

It is well established by this Court's prior decisions that the contracting stevedore owes to its shipowner customer an implied warranty to perform the stevedoring services in a workmanlike manner, and with competency and safety.[3] Contracting stevedores do not

---

[2] *American Stevedores, Inc.* v. *Porello*, 330 US 446, 456.

[3] *Ryan Stevedore Co.* v. *Pan-Atlantic S.S. Corp.*, 350 US 124; and other cases cited in Note 1.

merely perform labor, but also supply and bring aboard the vessel various materials and equipment for their own use in the stevedoring operations. The shipowner is liable under its absolute warranty of seaworthiness to a longshoreman injured by unseaworthy equipment furnished and brought aboard by the stevedoring contractor.[4] Therefore, the shipowner must rely on the stevedore contractor to furnish equipment reasonably suitable and fit for the purpose intended. By furnishing defective equipment resulting in injury, the stevedore imposes a vicarious liability upon the shipowner. Therefore, the contracting stevedore should be held to an implied warranty that the equipment it furnishes will be suitable for the purpose intended.

Since the stevedore's liability for indemnity is based upon contractual warranty, proof of negligence is not required. The principles stated in *Ryan*, and other decisions of this Court considering the extent of the stevedore's warranty, establish that the stevedore owes to the shipowner a contractual warranty of suitability of equipment, and is liable to indemnify the shipowner against a foreseeable loss resulting from breach of such warranty.

The reasoning of this Court in the recent decision in *Reed* v. *The Yaka*[5] clearly establishes that the ultimate loss falls upon the independent contracting stevedore who furnishes latently defective equipment.

---

[4] *Alaska S.S. Co. v. Petterson*, 347 US 396.

[5] 373 US 410, 10 L Ed 2d 448 (May 27, 1963).

This Court has repeatedly stated that the stevedore's warranty is "comparable to a manufacturer's warranty as to the soundness of its product." Therefore, the stevedore's warranty as to its equipment, like the manufacturer's as to its product, is absolute.

It is the stevedore who owns, furnishes and brings the equipment aboard the vessel, and has exclusive control over its use. The shipowner has no control over such equipment. The strong public policy to avoid or minimize the risk of injury to shipboard employees requires placing the ultimate loss upon the stevedore, who is in the best position to eliminate the hazards.

It is only fair to place the ultimate liability upon the stevedore contractor, who, by furnishing defective equipment, has visited a liability upon the shipowner.

ARGUMENT

Background and Circumstances of the Warranty

The shipowner owes to seamen, longshoremen, and others doing the traditional work of seamen, an absolute warranty of seaworthiness. *Seas Shipping Co.* v. *Sieracki*, 328 US 85. This warranty is absolute and does not depend upon negligence. The standard of seaworthiness is "reasonable fitness" and "reasonably suitable" for the intended purpose. *Mitchell* v. *Trawler Racer*, 362 US 539.

Shipowners engage contracting stevedores to perform the work of loading and unloading the vessels. It is now well settled that the stevedore contractor owes

to its shipowner customer an implied-in-fact warranty to perform the stevedoring work with competency and safety. Therefore, the stevedore contractor must indemnify the shipowner for damages the shipowner may be called upon to pay to a longshoreman injured as a result of the stevedore's failure to perform its services in a workmanlike manner.[6]

Stevedores do not merely perform labor aboard vessels,—they also bring aboard all sorts of gear and equipment, such as blocks, shackles, cables, slings, ropes, hatch tents, pallet boards, tractors, stowing winches, cargo hooks, dollies, or trucks, and other specialized gear for handling cargo.

In the present case the stevedore furnished a hatch tent, with appurtenant tie ropes, pursuant to its contractual obligation to "furnish all ordinary gear for the performance of the services . . . and usual appliances used for stevedoring" (R. 23a).

If the stevedore contractor furnishes unseaworthy equipment which results in injury to a longshoreman, the shipowner is thereby subjected to liability to the injured man under its absolute warranty of seaworthiness. In other words, the shipowner's liability under its warranty of seaworthiness applies even to defective equipment brought aboard by the independent contractor over which the shipowner has no control. *Alaska S.S. Co.* v. *Petterson*, 347 US 396; *Mitchell* v. *Trawler Racer*, *supra*, p. 549.

---

[6] *Ryan Stevedore Co.* v. *Pan-Atlantic S.S. Corp.*, 350 US 124; *Crumady* v. *J. H. Fisser*, 358 US 423; *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 US 563.

The shipowner hires the contracting stevedore as a specialist, and relies upon the contractor's expertise.[7] Since the shipowner is held to warrant seaworthiness of equipment furnished by the stevedore, the shipowner must necessarily rely on the stevedore to furnish equipment that meets the standard of seaworthiness. As in the present case, the stevedore contractor normally owns the equipment, brings it aboard the vessel, and retains exclusive control over its use in the stevedoring operations (R. 25). The shipowner has no control over the equipment. By furnishing the defective equipment which caused the injury, the stevedore has thereby visited liability upon the shipowner. Therefore, in all fairness, the stevedore contractor should be held to warrant that the equipment furnished is suitable for the purpose, and should indemnify the shipowner for breach of such warranty.

Shipowner's Right to Indemnity Is Based on Principles Stated in this Court's Prior Decisions

The precise question, which involves stevedore-furnished equipment unsuitable because of *latent defect*, without proof of negligence by the stevedore, is of first impression before this Court. However, the shipowner's right to indemnity follows logically from the principles announced in this Court's prior decisions which have

---

[7] *Hugev* v. *Dampsk Int.*, 170 F Supp 601, affd sub nom *Metropolitan Stevedore Co.* v. *Dampsk Int.*, 274 F2d 875 (9 Cir 1960); *Revel* v. *Amer. Export Lines*, 162 F Supp 279, affd 266 F2d 82 (4 Cir 1959).

considered the stevedore's warranty to the shipowner.[8]

In *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 US 124, the contracting stevedore stowed cargo in an unseaworthy manner, as a result of which a discharging longshoreman was injured. This Court held that the shipowner was entitled to full indemnity against the stevedore contractor for the damages recovered by the injured longshoreman, upon the ground that the stevedore had breached its implied warranty to the shipowner.

> "The shipowner here holds petitioner's uncontroverted agreement to perform all of the shipowner's stevedoring operations at the time and place where the cargo in question was loaded. That agreement necessarily includes petitioner's obligation not only to stow the pulp rolls, but to stow them properly and safely. Competency and safety of stowage are inescapable elements of the service undertaken. This obligation is not a quasi-contractual obligation implied in law or arising out of a noncontractual relationship. It is of the essence of petitioner's stevedoring contract. It is petitioner's warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product." 350 US at pp. 133-34.

It is true the *Ryan* case involved negligence in performance of the stevedoring labor, rather than furnishing defective equipment. But this Court emphasized that the basis for recovery was not in tort, but in contract. And the Court made this significant statement:

"A like result occurs where a shipowner sues,

---

[8] *Ryan Stevedore Co.* v. *Pan-Atlantic S.S. Corp.*, 350 US 124; *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 US 563; *Crumady* v. *The J. H. Fisser*, 358 US 423; *Waterman S.S. Corp.* v. *Dugan & McNamara*, 364 US 421; *Reed* v. *The Yaka*, 373 US 410.

> for breach of warranty, a supplier of defective ship's gear that has caused injury or death to a longshoreman using it in the course of his employment on shipboard." 350 US 130.

This statement exactly fits the facts of the case at bar.

The opinion also states that "competency and safety of stowage are inescapable elements of the service undertaken." 350 US at p. 133. Obviously, the stevedore cannot perform with "competency and safety" if it furnishes equipment that is not suitable for use on the job.

These same principles have been stated in the subsequent cases of *Weyerhaeuser S.S. Co.* v. *Nacirema Co.*, 355 US 563 (where it was further emphasized that the stevedore's liability is based upon contractual warranty, and principles of negligence are not applicable); *Crumady* v. *J. H. Fisser*, 358 US 423; *Waterman S. S. Corp.* v. *Dugan & McNamara*, 364 US 421.

In the *Waterman* case this Court states:

> "The ship and its owner are equally liable for a *breach by the contractor* of the owner's nondelegable duty to provide a seaworthy vessel." (Emphasis supplied) 364 US at 424-25.

This language recognizes that a stevedore commits a breach of his warranty when he subjects the shipowner to liability under the latter's absolute warranty of seaworthiness.

Most important, and most recent, is *Reed* v. *The Yaka*, 373 US 410, decided May 27, 1963, subsequent

to the Court of Appeals decision of the case at bar. The reasoning of this Court in *The Yaka* makes clear that an independent contracting stevedore is liable to indemnify the shipowner for damages paid a longshoreman injured as a result of latently defective equipment furnished by the stevedore.

In *The Yaka*, the ship operator performed its own stevedoring work, instead of engaging an independent contractor stevedore. Thus, the ship operator hired the longshoremen directly and was their "employer." The question was whether the exclusive liability provisions of the Longshoremen and Harbor Worker's Act[9] relieved the ship operator from his usual liability to longshoremen for breach of the warranty of seaworthiness. In holding that it did not, the Court reasoned that if the ship operator had hired an independent contracting stevedore, who had furnished the latently defective equipment, the ship operator would have been liable to the longshoreman, but could then have recovered full indemnity against the contracting stevedore.

The opinion expressly points out that the cause of injury to the longshoreman was a *latent defect* in a pallet board furnished for use in the stevedoring work.

> "The district judge found that at the time of the injury petitioner was in the ship standing on a stack of rectangular, wooden pallets used in loading the vessel and that the sole cause of the injury was a *latent defect* in one of the planks of a pallet, which caused it to break." (Emphasis supplied) 373 US —, 10 L Ed 2d 448 at p. 450.

---

[9] 33 USC § 905.

No negligence was involved. This Court stated clearly that if the stevedoring work had been performed by an independent contractor, the longshoreman could have recovered from the shipowner, who could then have recovered indemnity against the stevedore.

> "Thus, there can be no doubt that, if the petitioner here had been employed to do this particular work by an independent stevedoring company rather than directly by the owner, he could have recovered damages for his injury from the owner who could have then under Ryan shifted the burden of the recovery to petitioner's stevedoring employer."

The opinion points out there is no economic difference between allowing the longshoreman direct recovery against the shipowner who acts as his own stevedore, and allowing recovery against the shipowner who hires an independent contracting stevedore, and then allowing indemnity against the stevedore company. "In either case, under *Ryan*, the burden ultimately falls on the company whose default caused the injury."

These statements are not dicta,—they are the very basis for decision. And they exactly fit the case now before the Court. Respondent stevedore is an independent contractor. It furnished latently defective equipment. Therefore, the burden must ultimately fall on the respondent stevedore company, whose default caused the injury.

The Yaka decision was rendered after the Court of Appeals decision in the present case. Otherwise, it is fair to assume it would have been followed by the Court of Appeals.

Stevedore's Warranty Is Absolute as to Stevedore-Furnished Equipment—Proof of Negligence Not Required

The stevedore's implied warranty is breached by furnishing and bringing aboard the vessel equipment which is not suitable for the purpose intended. The shipowner's right to indemnity does not depend upon proof of negligence.

This Court has repeatedly stated that the stevedore's warranty is "comparable to a manufacturer's warranty of the soundness of its manufactured product." *Ryan Stevedore Co.* v. *Pan-Atlantic*, 350 US 124, pp. 133-34; *Crumady* v. *J. H. Fisser*, 358 US 423, 428-29; *Waterman S.S. Corp.* v. *Dugan & McNamara*, 364 US 421, 424; *Atlantic & Gulf Stevedores, Inc.* v. *Ellerman Lines Ltd.*, 369 US 355, 359.

The overwhelming weight of authority establishes that the manufacturer's warranty is absolute, and does not depend upon proof of negligence.

Long ago, this Court in *Kellogg Bridge Co.* v. *Hamilton*, 110 US 108 (1884) quoted with approval from *Leopold* v. *Vankirk*, 27 Wis 152, as follows:

> "The general rule of law with respect to implied warranties is well settled, that when the manufacturer of an article sells it for a particular purpose, the purchaser, making known to him at the time the purpose for which he buys it, the seller thereby warrants it fit, and proper for such purpose and *free from latent defects.*" (Emphasis supplied) 110 US 108, 115.

In *Booth S.S. Co.* v. *Meier & Oelhaf Co.*, 262 F2d

310 (2 Cir 1958), involving the same question now before this Court, the Court said:

> "The implied warranty of suitability for a particular use made by manufacturers and retailers is generally considered absolute, however, and is not avoided by the fact that in the exercise of ordinary care the defendant could not discover the injury-causing defect." 262 F2d 310 at p. 314.

Compare also The Uniform Sales Act, Sec 15(1):[10]

> "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose."

Even independently of this Court's repeated statements likening the stevedore's warranty to a manufacturer's warranty of the soundness of its product, the stevedore as a supplier of the equipment owes the implied warranty of suitability for the purpose intended. The stevedore contractor furnishes the equipment for a particular purpose,—indeed for its own use in the stevedoring operations. The shipowner relies upon the stevedore as a specialist and expert.[11] The stevedore derives profit from the transaction. Under these circumstances a supplier of chattels warrants suitability for the intended use.

In Williston on Contracts, Rev Ed § 1041, it is stated:

> "Analogy with the law of sales justifies the fur-

---

[10] Williston on Contracts, Rev Ed 1936, § 982.

[11] See Note 7, supra.

ther statement that if the hirer reasonably relied on the bailor's superior skill or knowledge in furnishing suitable property, the latter would be liable even though in fact ignorant of the defects in the goods which he furnished."

In *Booth S.S. Co.* v. *Meier & Oelhaf Co., supra,* the Second Circuit said:

"It has repeatedly been suggested that the liabilities of suppliers should be co-extensive with those of the law of sales." 262 F2d at p. 314.

On this point we again refer to this Court's statement in the *Ryan* case:

"A like result occurs when a shipowner sues, for breach of warranty, the supplier of defective ship's gear that has caused injury or death to a longshoreman using it in the course of his employment on shipboard." 350 US 130.

If one who hires equipment to another for a particular use is held to be an absolute warranty that the equipment is suitable for the intended use, then *a fortiori* is the stevedore in this case, who owned and furnished the equipment, and at all times retained exclusive control and supervision over its use (R. 25).

To require the stevedore to warrant seaworthiness of equipment furnished by him does not impose an unreasonable burden on the stevedore. For, while the warranty is absolute, the standard of seaworthiness is only "reasonable fitness" and "reasonably suitable" for the intended purpose. *Mitchell* v. *Trawler Racer,* 362 US 539, 550. In other words, the stevedore's duty as to equipment which he supplies is no greater than the shipowner's duty as to its vessel and equipment.

It may also be observed that it would be unfair to place on the shipowner the burden of proving that the stevedore was negligent, since all evidence as to age, history, inspections, and tests of the equipment, and also its use on the vessel, is exclusively in possession of the stevedore.

Courts of Appeals Decisions

Petitioner's right to indemnity is supported by the unanimous opinion of the Second Circuit in *Booth S.S. Co.* v. *Meier & Oelhaf*, 262 F2d 310 (2 Cir 1958), and by the sound reasoning of Judge Jertberg's forceful dissent in the present case. 310 F2d at p. 488 (R. 54-64).

In the *Booth* case, an independent ship repair contractor, pursuant to oral agreement with the shipowner, undertook to overhaul the vessel's engines. This included the work of removing tight-fitting cylinder liners. For use in the work, the contractor furnished a wire strap. It broke, causing injury to plaintiff, who was an employee of the contractor. The strap broke because of latent defect. There was no proof of negligence on the part of the contractor.

The district court denied the shipowner's claim for indemnity against the contractor for damages recovered by the plaintiff. The Court of Appeals reversed, holding that under the contract there was an implied warranty on the part of the contractor that the work would be done safely, and that this warranty was breached by the contractor supplying equipment not suitable, due to latent defect, for the purpose intended, even though the contractor was not negligent.

The well-reasoned opinion in *Booth* could well stand as petitioner's brief in the present case. It points out that the contractor, as a supplier of equipment for a particular purpose, owes an absolute warranty of suitability, and also the fairness of placing the ultimate risk upon the party supplying the equipment who is in the best position to minimize the risk.

The Court of Appeals decision in the present case is by only two judges. 310 F2d 481 (R. 43-54). The opinion is based largely on semantics and a narrow interpretation of the words "workmanlike service," which the majority equates to absence of negligence. In this, the majority overlooks the fact that contracting stevedores do not merely furnish labor, but furnish all sorts of gear and equipment for their own use. Scant attention is given to this Court's oft-repeated statements that "the stevedore's warranty is comparable to the manufacturer's warranty of the soundness of its product" and that "competency and safety of stowage are inescapable elements of the service undertaken." The majority also ignores that the public policy, to minimize the risk of injury to shipboard workers, requires placing the ultimate loss upon the party who is in the best position to minimize that risk, rather than upon the shipowner, who has no control over tools and equipment brought aboard by independent contractors for their own use. And finally, of course, the majority did not have the benefit of this Court's most recent decision in *Reed* v. *The Yaka*, discussed above.

Petitioner submits that Judge Jertberg's forceful dis-

sent contains better reasoning. It follows the *Booth* case, with emphasis upon the contracting stevedore's warranty being like that of a manufacturer, and also the better position of the stevedore to avoid risks of accident resulting from defects in the equipment which he supplies. Judge Jertberg also points out the simple fairness in placing the ultimate liability upon the contractor who, by furnishing the defective equipment, has visited a loss upon the shipowner.

Public Policy to Avoid Risk of Injury

Stevedore-furnished equipment is used in hazardous work. Public policy requires placing the ultimate loss upon the party in the best position to avoid or minimize the risk of injury to shipboard employees.

The shipowner, vis-a-vis the injured longshoreman, is subject to absolute liability upon the warranty of seaworthiness, and is therefore responsible for the result of latent defect in stevedore-furnished equipment which he cannot prevent. *Alaska S.S. Co.* v. *Petterson*, 347 US 396, 401. This assures monetary damages to the injured longshoreman. But it does nothing to avoid the injury, because the shipowner has no control over the equipment furnished by the independent contractor.

In order to protect the worker from injury (rather than merely pay for his broken limb) the ultimate burden should be placed upon the party best able to eliminate the hazard,—namely the stevedoring contractor. For it is the stevedore who owns the equipment, supplies it, and brings it aboard the vessel, and retains con-

trol and supervision over its use (R. 25). The stevedore knows the source and history of the equipment and has the opportunity to keep records and make periodic tests, and may take precautions beyond those required by standards of ordinary care.

This was an important consideration in the *Booth* decision. See 262 F2d, pp. 314-15. The same principle is expressed by a different panel of the Second Circuit in *DeGioia* v. *United States Lines*, 304 F2d 421:

> "The primary source of the shipowner's right to indemnity, as a practical matter, is his nondelegable duty to provide a seaworthy ship, by virtue of which he may be held vicariously liable for injuries caused by hazards which the longshoremen either created or had the primary responsibilty or opportunity to eliminate or avoid. *Waterman S.S. Corp.* v. *Dugan & McNamara, Inc.*, supra; 364 U.S. 421, 424-425, 81 S. Ct. 200, 5 L. ed. 2d 169; *Paliaga* v. *Luckenbach S.S. Co.*, 2 Cir., 301 F.2d 403, 408. The function of the doctrine of unseaworthiness and the corollary doctrine of indemnification is allocation of the losses caused by shipboard injuries to the enterprise, and within the several segments of the enterprise, to the institution or institutions most able to minimize the particular risk involved. . . . The scope of the stevedore's warranty of workmanlike performance is to be measured by the relationship which brings it into being." Pp. 425-26.

The same thought is well expressed in Judge Jertberg's dissenting opinion:

> "Since the loss must be borne by either one or the other, it is not unfair that such loss be ultimately borne by the one best able to eliminate the hazard, to wit: the owner of the defective gear or equipment who supplied it and whose use and control over it was exclusive." 310 F2d 491 (R. 60-61).

Fairness and Equity Require Placing the Ultimate Loss on the Stevedore

It is true that in the present case neither the stevedore nor the shipowner was guilty of negligence. But when the stevedore brought defective equipment aboard the vessel, it imposed a liability on the innocent shipowner. The shipowner is liable for the latently unseaworthy condition of the equipment brought aboard and used by the stevedore. *Alaska S.S. Co.* v. *Petterson*, 347 US 396.

This is a vicarious liability. The shipowner has not been at fault. The shipowner relies on the contractor and has no control over equipment which the stevedore brings aboard. It is the contracting stevedore who has created the unseaworthiness, and who has imposed liability upon the shipowner.

The shipowner is held liable to the injured man upon the absolute warranty of seaworthiness because of the humanitarian policy to protect the men doing seamen's work.[12] But the contest between shipowner and stevedore company is between parties who are economically equal. As between the two, fairness and equity require that the ultimate loss fall on the stevedore who has visited the liability upon the shipowner.

---

[12] *Seas Shipping Co.* v. *Sieracki*, 328 US 85; *Mitchell* v. *Trawler Racer*, 362 US 539.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed; and the case remanded with directions to enter judgment in favor of petitioner.

Respectfully submitted,

ERSKINE WOOD,
ERSKINE B. WOOD,
Counsel for Petitioner,
1310 Yeon Building,
Portland 4, Oregon.

DATED August 20, 1963.